

November 10, 2010

**To:** Chuck Bell  
Bob Stern  
**From:** Gary Winuk  
Jeff Marston  
**Subject:** Termination Requirements Recommendations

## **Background**

We were assigned the task of providing recommendations back to you on the topic of termination requirements. Below are our recommendations, which reflect outreach to a limited number of other task force members and individuals, and following the guidance provided by you as to specific topics to be considered.

## **Assigned Topics:**

- 1. Consider shorter window for terminations of older committees.**
- 2. Consider impact of candidates' filing to raise money elections and termination issues when candidates abandon or never file Election Code candidacies for the future election.**

## **Recommendations:**

**1. Administrative Termination of Committees:** We recommend that, for any committee that does not file their required campaign disclosure statements for more than four consecutive reporting periods, the FPPC be permitted to administratively terminate that committee. In order to administratively terminate the committee, the FPPC must personally serve the committee with notice of the proposed administrative termination. Additionally, the FPPC may not administratively terminate the committee if the committee objects to termination for any reason, or if the committee has a cash balance in excess of \$5,000. Committees with cash balances will still be required to file after termination to detail the expenditure of funds. Vendors who are owed funds by the committee would also be notified of the termination.

**Rationale:** There are a large number of inactive committees that do not terminate and continue to accumulate non-filer letters and actions from the Secretary of State and FPPC. Allowing these committees to be administratively terminated will save resources for the State, and also relieve the filers from enforcement actions for non-filing future statements.

**Applicable statutes/regulations/cases:** None

**2. Consistent Committee Termination Rules:** We recommend that State and local candidate controlled committees be required to terminate their committees within 24 months of the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed, or for withdrawn candidates, no later than 24 months after the election from which the candidate withdrew if the committee has either a surplus of funds and/or no net debt. We recommend eliminating the requirement to petition the Executive Director of the FPPC to grant an extension of the termination requirement for committees with net debt, but rather to allow committees to remain open until such time as their net debt is retired.. We recommend that surplus funds be allowed to be used for any reason permitted by personal use except for transportation, meals or lodging, making independent expenditures, or using the funds in their own future campaign without transferring it to a new committee. We also recommend continuing to only allow any funds raised after the candidate withdraws, loses the election, or vacates the office to which the committee relates to be used to retire net debt for committees with net debt.

**Rationale:** Currently the provisions requiring candidate controlled committees only apply to State, not local candidates/officeholders. This should be made consistent. Currently, committees with no net debt are required to terminate within 9 months while committees with net debt are required to terminate within 24 months. Committees with surplus funds should be given more time, up to 24 months, to decide how to dispose of their surplus funds, particularly if they are deciding whether or not to seek another political office. Committees with net debt should be allowed to continue to raise funds to retire their net debt, because if the debt is not retired, candidates can be left with nothing but personal liability for the net debt. Committees with net debt currently must also, as a part of the required closure within 24 months, submit a statement stating they are unable to retire the debt. This further exacerbates the personal liability issue.. Also, currently, committees with net debt are required to apply for extensions with the Executive Director of the FPPC if they are past the prescribed termination limits. This in practice has led to committees remaining open well past the 24 months even under the present rules. Lastly, recently settled litigation has outlined and expanded the permissible uses for surplus funds in these committees on Constitutional grounds, and the Act should be amended to reflect the ruling.

**Applicable statutes/regulations/cases:** Government Code Sections 84214, 89519, FPPC Regulation 18404.1, *Carole Migden, et al. v. California Fair Political Practices Commission, et al.*, Federal District Court for the Eastern District of California, Case No. 2:08-CIV- 486 LEW-EFB.